

§ 1.943

prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, shall be considered: Age and health of the debtor, present and potential income, inheritance prospects, the possibility that assets have been concealed or improperly transferred by the debtor, the availability of assets or income which may be realized by means of enforced collection proceedings.

(b) *Inability to locate debtor.* The debtor cannot be located, no security remains to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset are too remote.

(c) *Death of debtor.* The debtor is determined to be deceased and the Government has no prospect of collection from his/her estate.

(d) *Cost will exceed recovery.* The cost of further collection effort is likely to exceed the amount recoverable.

(e) *Claim legally without merit.* Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(f) *Claim cannot be substantiated by evidence.* VA will terminate collection action on once asserted claims because of lack of evidence or unavailability of witnesses only in cases where efforts to induce voluntary payment are unsuccessful.

[32 FR 2615, Feb. 8, 1967, as amended at 52 FR 42111, Nov. 3, 1987]

§ 1.943 Transfer of claims.

When VA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the GAO for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a government sponsored program, VA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration. Claims on which VA holds a judgment by assignment or otherwise shall be referred to the De-

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partment of Justice for further actions if renewal of the judgment lien or enforced collection proceedings are justified, except where VA has authority for handling its own litigation.

(Authority: 31 U.S.C. 3711)

[52 FR 42111, Nov. 3, 1987]

REFERRALS TO GAO, DEPARTMENT OF JUSTICE, OR IRS

AUTHORITY: Sections 1.950 to 1.954 issued under 72 Stat. 1114; 38 U.S.C. 501.

SOURCE: Sections 1.950 to 1.954 appear at 52 FR 42111, 42112, Nov. 3, 1987, unless otherwise noted.

§ 1.950 Prompt referral.

(a) Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken and which cannot be compromised, or on which collection action cannot be suspended or terminated, shall be promptly referred to the Department of Justice for litigation. Claims for which the gross original amount is over \$100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is \$100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive collection action and the observance of §§ 1.900 through 1.954, and well within the time period for bringing a suit against the debtor. Ordinarily, such referrals should be made within one year of VA's final determination of the fact and amount of the debt.

(b) Claims arising from audit exceptions taken by the GAO to payments made by VA must be referred to the GAO for review and approval, prior to referral to the Department of Justice, unless VA has been granted an exception by the GAO.

(c) When the merits of VA claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the Department of Veterans Affairs shall refer the matter to